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IN THE

Supreme Court of the United States

No. 491

J. P. GRUBB, A NATURAL PERSON, ETC.,
Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO, ET AL.,
Appellees.

REPLY BRIEF OF APPELLEES, ON MOTION TO DISMISS OR AFFIRM

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The crossing and recrossing of the Ohio River at Portsmouth, contended for by appellant is a subterfuge intra-state transportation of persons and the Public Utilities Commission of Ohio so found, and this finding was affirmed by the Supreme Court of Ohio (Par. 4, page 15 former brief of Appellees).----------2-3

Our system of government rests upon the lawful right of the citizen whether arising from the legitimate exercise of state or national power unless excepted by express constitutional or valid legislative limitation to resort to either the courts of the state or nation for redress of their grievances.----------2-5

Neither the constitution of the U. S. or the laws enacted by Congress confer exclusive jurisdiction on the federal courts in the instant case, consequently the Federal Court does not have exclusive but concurrent jurisdiction with the Courts of Ohio herein.------2-7

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IN THE

Supreme Court of the United States

No. 491

J. P. GRUBB, A NATURAL PERSON PROPOSING TO OPERATE INTERSTATE, THE TRI-STATE TRANSIT COMPANY,

Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO, WILLIAM KLINGER, JAMES W. HUFFMAN AND FRANK MAULLAR, MEMBERS OF AND CONSTITUTING SAID THE PUBLIC UTILITIES COMMISSION OF OHIO, THE INTERSTATE MOTOR TRANSIT COMPANY, A CORPORATION, THE CANNONBALL TRANSPORTATION COMPANY, A CORPORATION, THE PORTSMOUTH PUBLIC SERVICE COMPANY, A CORPORATION, THE OHIO VALLEY BUS COMPANY, A CORPORATION, ELSA CANTER, SHERIFF, SCIOTO COUNTY, OHIO, — SHEETS, CHIEF OF POLICE OF PORTSMOUTH, OHIO, AND THE SHERIFFS OF FRANKLIN COUNTY, PICKAWAY COUNTY, ROSS COUNTY, PIKE COUNTY AND LAWRENCE COUNTY, ALL OF SAID COUNTIES BEING IN THE STATE OF OHIO, AND THE CHIEFS OF POLICE AND MEMBERS OF THE POLICE DEPARTMENTS OF THE CITIES, TOWNS AND VILLAGES OF THE STATE OF OHIO, WHOSE NAMES ARE UNKNOWN TO THE PLAINTIFF AND TOO NUMEROUS TO MENTION,

Appellees.

REPLY BRIEF OF APPELLEES ON MOTION TO DISMISS OR AFFIRM.

FIRST

STATEMENT

On page 54 of Appellants Brief, we find the following head:

"THE JURISDICTION OF THE FEDERAL COURT IS EXCLUSIVE"

The entire argument of his brief is based on this proposition,—neither the cases cited by appellant nor the reason given in his brief support this claim, and it is untenable for the following reasons:

1. The crossing and recrossing of the Ohio River at Portsmouth, contended for by appellant is a subterfuge intra-state transportation of persons and the Public Utilities Commission of Ohio so found, and this finding was affirmed by the Supreme Court of Ohio (Par. 4, page 15 former brief of Appellees).
2. Our system of government rests upon the lawful right of the citizen whether arising from the legitimate exercise of state or national power unless excepted by express constitutional or valid legislative limitation to resort to either the courts of the state or nation for redress of their grievances.
3. Neither the constitution of the U. S. or the laws enacted by Congress confer exclusive jurisdiction on the federal courts in the instant case, consequently the Federal Court

does not have exclusive but concurrent jurisdiction with the Courts of Ohio herein.

We will notice the foregoing propositions in their order:

1. **THE CROSSING AND RECROSSING OF THE OHIO RIVER AT PORTSMOUTH, CONTENDED FOR BY APPELLANT IS A SUBTERFUGE INTRA-STATE TRANSPORTATION OF PERSONS AND THE PUBLIC UTILITIES COMMISSION OF OHIO SO FOUND, AND THIS FINDING WAS AFFIRMED BY THE SUPREME COURT OF OHIO (Par. 4, page 15, former brief).**

This proposition appears on pages 15 to 19 inclusive of its original printed brief filed herein, where it clearly appears from the record that the facts upon which appellant bases his contention that the crossing and recrossing of the bridge over the Ohio River at Portsmouth, constitutes interstate commerce, was in issue, heard on the evidence, and determined by both the Public Utilities Commission of Ohio and the Supreme Court of Ohio. This is not a question of interstate commerce, because the commission, in the legitimate exercise of its powers found that the crossing of the bridge over the Ohio River at Portsmouth, and return, was a subterfuge to evade compliance with the statutory requirement of Ohio. Appellant cannot avoid the laws of the State of Ohio, and do intra-state business under the cloak and guise of simply crossing the bridge at Portsmouth from Ohio to Kentucky and immediately returning.

The independent right of the State of Ohio to pro-

tect its highways, prescribe their use and determine the facts in respect thereto is exclusive. Appellant, Grubb, in this case should not be permitted to defeat this right of the State of Ohio, by invoking the shadow of the interstate clause of the constitution of the United States without regard to its substance. This question is not new to this Court.

In the case of Kane vs. State of New Jersey, 242, United States, 160, the law applicable hereto, is stated in the fourth syllabus, in the following language:

> "The power of the state, in the absence of national legislation upon the subject, to regulate the use of its highways, by motor vehicles moving in inter-state commerce, applies as well to such as are moving through the state, as to such as are moving into it only."

We find this court, in delivering its opinion, at page 167, uses the following language:

> **"THE POWER OF A STATE TO REGULATE THE USE OF MOTOR VEHICLES ON ITS HIGHWAYS HAS BEEN RECENTLY CONSIDERED BY THIS COURT AND BROADLY SUSTAINED."**

The same question has been, before, considered and determined, by the Supreme Court, the highest court in the State of Ohio, in the case of Detroit-Cincinnati Coach Line, Inc., vs. Public Utilities Commission of Ohio, decided December 12th, 1928, 119 O. S., 324, in which the law is stated in the syllabus as follows:

> "Where a common carrier by motor vehicle operating over state highways in interstate com-

merce habitually violates reasonable and lawful rules and regulations of the public utilities commission of the state, carries passengers in intrastate service without a certificate authorizing the same and violates the laws of the State regulating the speed of motor vehicles on the state highways, all such violations being committed in such manner and to such extent as would justify a revocation of the certificate of an operator of motor vehicles in intrastate commerce, the certificate theretofore granted to such operator by the public utilities commission to operate as a common carrier in interstate commerce may be revoked."

It appears from the foregoing citations that broad judicial sanction has been given to the right of the State of Ohio, to regulate the use of its highways by motor vehicles moving in inter-state commerce by the highest courts, both state and federal, to-with: The Supreme Court of the State of Ohio, and this Court.

2. OUR SYSTEM OF GOVERNMENT RESTS UPON THE LAWFUL RIGHT OF THE CITIZEN WHETHER ARISING FROM THE LEGITIMATE EXERCISE OF STATE OR NATIONAL POWER, UNLESS EXCEPTED BY EXPRESS CONSTITUTIONAL OR VALID LEGISLATIVE LIMITATION, TO RESORT TO EITHER THE COURTS OF THE STATE OR NATION FOR REDRESS OF THEIR GRIEVANCES.

This Court, in determining this question, in the case of Plaquemines Tropical Fruit Company vs. Hen-

derson, 170, United States 511, the court states the law in the following language:

> "The courts of a state may take cognizance of a suit brought by the State, in its own courts, against citizens of other states, subject to the right of the defendant to have such suit removed to the proper Circuit Court of the United States, whenever the removal thereof is authorized by act of Congress, and subject also to the authority of this Court to review the final judgment of the state court, if the case be one within its appellate jurisdiction.

Minneapolis & St. Louis Railroad Company vs Bombolis Administrator of Nanos, 241, United States 211, Chief Justice White, in delivering the opinion of the court at page 221, uses the following language.

> "Moreover the proposition is in conflict with an essential principal upon which our dual constitutional system of government rests, that is, that lawful rights of the citizens, whether arising from a legitimate exercise of state or national power, unless excepted by express constitutional limitation, or by valid legislation to the effect, **are concurrently subject to be enforced in the courts of the state or nation** when such right comes within the general scope of the jurisdiction conferred upon such courts by the authority, state or nation, creating them."

Galveston, Harrisburg & San Antonio Railway V. Wallace. Same vs. Crow. 223 United States 481 announces the law in the fourth syllabus, in the follow-

ing language:

> "When a federal statute, creating an action, such as the Carmack amendment, is silent on the subject of jurisdiction, the presumption is that the action may be asserted in a state, as well as in a federal court."

From the foregoing citiations it appears that the Public Utilities Commission and the Supreme Court, the highest court of the State of Ohio, had jurisdiction in the determination of the matters complained of in the Bill of Complaint of appellant. The fact that appellant instituted the proceedings in error in the Supreme Court of the State of Ohio to reverse the finding of the Public Utilities Commission of Ohio in said matter making only the State of Ohio defendant in error cannot avail appellant herein. The other appellees herein were bound by whatever judgment the Supreme Court of Ohio might render in said proceedings. They were mere privies to the Public Utilities Commission of Ohio as defendant in error. But from the records in the case it affirmatively appears appellees as a matter of fact were by the joining of the hearing of the two proceedings in error represented before the Supreme Court in the determination of the matter.

From these considerations, it is apparent that the jurisdiction of the Supreme Court of Ohio, is concurrent with that of the Federal Courts unless such jurisdiction is exclusively conferred by the provisions of the constitution or the laws of the United States, hence we will notice the third proposition.

3. NEITHER THE CONSTITUTION OF THE UNITED STATES OR THE LAWS ENACTED BY

CONGRESS CONFER EXCLUSIVE JURISDICTION ON THE FEDERAL COURTS IN THE INSTANT CASE, CONSEQUENTLY THE FEDERAL COURT DOES NOT HAVE EXCLUSIVE BUT CONCURRENT JURISDICTION WITH THE COURTS OF OHIO HEREIN.

The jurisdiction of Federal Courts is provided by the following provisions of Section 2, Article 3 of the Constitution of the United States.

> The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and martime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; beween citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State or the citiens thereof, and foreign States, citizens thereof, and foreign States, citizens, or subjects.
>
> In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact,

with such exceptions and under such regulations as the Congress shall make."

The law enacted by Congress governing jurisdiction, is contained in Section 1233 (Section 256 of the Judicial Code) in the following language:

> Cases in which jurisdiction of United States Courts shall be exclusive of State Courts.
>
> The jurisdiction vested in the courts of the United States, in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several states:
>
> First: Of all crimes and offenses, cognizable under the authority of United States.
>
> Second: Of all suits for penalties and forfeitures incurred under the laws of the United States.
>
> Third: Of all civil causes of admiralty and maritime jurisdiction; serving its suitors, in all cases, the right of a common law remedy, where the common law is competent to give it.
>
> Fourth: Of all seizures under the laws of the United States on land or on waters, not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.

Fifth: Of all case arising under the patent-right, or copy-right laws of the United States.

Sixth: Of all matters and proceedings in bankruptcy.

Seventh: Of all controversies of a civil nature, where a state is a party, except between a state and its citizens, or between a state and citzen of other states, or aliens.

Eighth: Of all suits and proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, or against consuls or vice-consuls.

R. S. Par. 711 Act March 3, 1911. c 231, Par. 256, 36 Stat. 1160.

It will thus be seen that exclusive jurisdiction in the matter in the instant case is not conferred upon the Federal Courts, either by the provisions of the constitution or the laws of the United States, and therefore the jurisdiction of the Supreme Court, the highest court in the State of Ohio, is concurrent with the Federal Courts, to determine said matter. Appellant Grubb had his remedy under the provisions of Section 237 of an act entitled:

> "An act to amend the judiciary code, etc., passed by Congress February 13th, 1925."

which act is set out in full, pages 23 and 24 of our former brief, to have prosecuted error to this court from

the judgment of the Supreme Court of Ohio, and having failed and neglected to do so, he has waived his right to appeal to the Court below in the instant case, and the Motion should be sustained.

Respectfully sbuitted,

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